

DAMON T. WILSON §
v. § CIVIL ACTION NO. 6:13v684
DIRECTOR, TDCJ-CID §

The Petitioner Damon Wilson, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Wilson states that he was convicted of aggravated sexual assault of a child and indecency with a child in April 24, 2007, in the 3rd Judicial District Court of Anderson County, Texas, receiving sentences of 25 and 20 years respectively. His conviction was affirmed on direct appeal and he unsuccessfully sought state habeas corpus relief. Wilson also previously filed a federal habeas corpus petition challenging this same conviction, which was dismissed with prejudice by the Court on October 7, 2010. Wilson v. Director, TDCJ-CID, civil action no. 6:10cv17 (E.D.Tex., October 7, 2010). The Fifth Circuit affirmed this dismissal by denying Wilson a certificate of appealability on May 9, 2011, and the Supreme Court denied Wilson a writ of certiorari.

Wilson raises a number of grounds for relief in the present habeas petition, but acknowledges that he has not received permission from the Fifth Circuit to file a second or successive petition, as required by 28 U.S.C. §2244(b)(3). Court records show that Wilson was denied leave to file a

second or successive petition on August 8, 2012. In re: Damon T. Wilson, slip op. no 12-40673 (5th Cir., August 8, 2012).

After review of the pleadings, the Magistrate Judge issued a Report recommending that the present petition be dismissed. The Magistrate Judge observed that Wilson has not received permission to file a second or successive petition and that until he does receive such permission, the district court lacks jurisdiction to consider his claims. Crone v. Cockrell, 324 F.3d 833, 836 (5th Cir. 2003). The Magistrate Judge also recommended that Wilson be denied a certificate of appealability, but that the denial of such certificate not affect his right to seek permission from the Fifth Circuit to file a second or successive petition.

Wilson filed objections to the Magistrate Judge's Report on October 10, 2013. These objections are largely devoted to arguing the merits of his case and complaining that he did not have a hearing in state court on his habeas corpus petition. He acknowledges that he must seek permission to file a second or successive petition, but says that he was hoping that the federal court would send his petition back to state court with instructions to conduct a proper hearing and enter written findings of fact.

Wilson's objections are without merit. The Magistrate Judge correctly concluded that the federal district court lacks jurisdiction over Wilson's claims until such time as Wilson secures permission from the Fifth Circuit Court of Appeals to file a successive petition. Because this Court lacks jurisdiction, the Magistrate Judge properly recommended that Wilson's petition be dismissed without prejudice until such time as such permission is obtained.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 8) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice, with refiling conditioned upon Wilson obtaining permission from the Fifth Circuit Court of Appeals to file a second or successive petition. He may not refile this petition until such permission is received. It is further

ORDERED that the Petitioner Damon Wilson is hereby DENIED a certificate of appealability *sua sponte*. The denial of the certificate of appealability relates only to the dismissal of the present case and shall have no effect upon Wilson's right to seek permission from the Fifth Circuit to file a second or successive petition. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 16th day of October, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**